

**Appl. No. 09/915,082**  
**Amdt. dated August 31, 2005**  
**Reply to final Office action of July 7, 2005**

### **REMARKS/ARGUMENTS**

Applicants have received the final Office action dated July 7, 2005, in which the Examiner: (1) rejected claim 5 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph; and (2) rejected claims 1-42 under 35 U.S.C. § 103(a) as being obvious over Fung (U.S. Pat. No. 6,859,882). With this Preliminary Amendment, Applicants amend claims 1, 5, 9, 11, 15, 21, 30, and 35 and cancel claims 10, 22, 31, 32. Based on the arguments and amendments contained herein, Applicants believe this case is in condition for allowance.

The final Office action states that the limitation "said state that consumes less power" lacks sufficient antecedent basis. Applicants are not entirely sure why the Examiner believes this to be the case. Applicants assume the Examiner's objection is based on the reference in claim 3 to a state that "uses" less electrical power, whereas claim 5 (which depends from claim 3) refers to the state that "consumes" less electrical power. While Applicants certainly believe one of ordinary skill in the art would find claim 5 to be sufficiently clear per the dictates of § 112, second paragraph, Applicants have amended claim 5 to expedite prosecution. This amendment does not narrow the scope of claim 5.

The Examiner used Fung to reject all pending claims as obvious. Figure 9 of Fung shows a system comprising a plurality of server modules 402 and a management module 430. Column 20, lines 46-67, explains that each server module includes an activity generator 406 which generates activity indicators 410. The activity indicators are used by the management module to determine the loading on each of the server modules individually and as a group. The management module also uses the activity indicators from the various server modules to "reduce power consumption while providing sufficient on-line capacity." Col. 21, lines 47-51. Thus, Fung teaches that the management module retrieves activity information from the server modules being controlled to determine how to control the power states of the server modules. By implication, a computer that reports little activity could be shut down to conserve power.

Applicants amend claim 1 to clarify that the load balancer and power management logic couples to the computer system's computers and to a network

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that is "external to said computer system." The load balancer and power management logic also is now claimed as changing the power state of a system computer "based on...transactions from said network." Thus, the claimed power management technique is based on transactions received into a computer system from an external network.<sup>1</sup> Fung, by contrast, teaches controlling the power state of computers based on activity information generated by the computer being controlled, and not based on transactions from an external network that are received by a load balancer and power management logic. For at least this reason, claim 1 and all claims dependent thereon are allowable over Fung.

Claim 9 requires a load balancer "having a connection to a network and receiving transactions from said network." Applicants amend claim 9 to require that the master power management agent (PMA) "causes the transaction processing computer that is determined to operate slower than another computer to change from one power state to another power state when the master PMA determines that a rate of transactions received by the load balancer from the network falls below a threshold." Fung does not disclose or even suggest this technique or architecture for controlling the power state of a computer. For at least this reason, claim 9 and all claims dependent thereon are allowable over Fung.

Applicants amend claim 21 to require "a load balancer computer having a connection to a second network over which the load balancer computer receives transactions and said load balancer is coupled to said first network over which said transactions are delivered to the transaction processing computers for further processing." Further, the claimed master PMA "maximizes a performance of the data center for a specified power limit by changing an operational state of a transaction processing computer that is determined to operate slower than at least one other transaction processing computer based on a level of transactions

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<sup>1</sup> Without limiting the claims, an example of an "external network" is shown in Applicants' Figure 1 as network 110.

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received by the load balancer from the second network." Fung does not teach or suggest changing the operational state of a computer based on a level of transactions received by a load balancer as claimed. For at least this reason, claim 21 and all claims dependent thereon are allowable over Fung.

Applicants traverse the rejection of claim 26. Claim 26 requires a user to be able to "specify a performance criterion for said data center." The user-specified "performance criterion" is used by the master PMA as claimed. Fung does not teach or suggest permitting a user to specify a performance criterion for the data center and adjusting the power consumption state of a computer based on the specified performance. Further, the final Office action failed to even acknowledge the existence of this claim language and thus the Examiner has not made out a prima facie case of obviousness. For either or both of these reasons, Applicants contend that claim 26 and all claims dependent thereon are allowable over Fung.

Claim 30 has been amended to require "monitoring a rate of transactions received from a network external to said system" and, on that basis as claimed, changing a power state of a computer. As explained above, Fung does not teach or suggest this feature. Claim 30 and all claims dependent thereon are allowable over Fung.

The Examiner rejected claims 35-42 but failed to refer to the limitations of these claims and where such limitations are found in the prior art. Without such an analysis by the Examiner, Applicants are disadvantaged in forming a response. At any rate, Applicants have amended claim 35 to require the claimed protocol to include "time sequences which specify permitted computer system power usage." The Examiner did not explain that this feature was found in Fung and Applicants do not find this limitation to be in Fung. For at least these reasons, Applicants contend that claim 35 and all claims dependent thereon are allowable over Fung.

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents

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accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,



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